In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1172

STANLEY HUBERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was charged in a three-count indictment with conspiring to violate the federal bankruptcy laws, concealing assets with the intent to defraud creditors, and making a false oath regarding the amount of debts owed by his bankrupt firm, in violation of 18 U.S.C. 152 and 371. After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was found guilty on each count and was sentenced (as amended) to imprisonment for consecutive three-year terms on counts 1 and 2, and five years' probation and a $5,000 fine on count 3. The court of appeals affirmed *per curiam* (Pet. App. 2a).

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The evidence showed that in 1963 petitioner had been the owner of a retail appliance store in Philadelphia and that that activity had been terminated by constable sale in July of that year. The following month, while still $20,000 in debt to creditors of the appliance store, petitioner procured the service of one Israel Gerson to purchase a furniture store which had a good credit rating (R. 20b–24b, 27b–30b, 57b–61b).[1] For the next three months petitioner, representing himself as Gerson and utilizing the credit of the acquired furniture store, ordered small appliances and other goods by telephone, and received approximately $150,000 of merchandise on credit (R. 35b–41b). Shortly after their receipt, the goods were transferred, in part, to petitioner's warehouse and, in part, to a group of "wholesalers." Consequently, when, in December 1963, a petition for an adjudication of involuntary bankruptcy was filed, few assets were found at the furniture store. A receiver was appointed in December and petitioner was adjudicated a bankrupt in January 1964. In the bankruptcy proceedings petitioner reported liabilities of only $95,642.63; he failed to report additional liabilities aggregating some $48,000 (Pet. 4). Petitioner kept no books of account and attributed his failure to schedule the remaining debts to his having "lost" many invoices, some of which were located by a federal agent in a trash can within the store (R. 69b, 55b). Petitioner denied conspiring to defraud his creditors. He al-

[1] Citations are to the "Appellee's Appendix," filed with the Clerk of this Court, containing the indictment, the judge's closing instructions, and petitioner's testimony.

leged that he was a poor businessman, and had lost money either by selling below cost or unsuccessful wagers at the race tracks (R. 33b, 65b).

To prove that petitioner had some of the missing merchandise in his possession when the receiver was appointed, the government showed that a large number of the orders, purchased on credit, were received by petitioner during September-November 1963 [2] and that the assets involved were not of the kind which in the normal course of business would have been completely dispersed by a small furniture store within one month's time. By its verdict the jury rejected petitioner's explanation that he squandered over $140,000 of assets at various race tracks and that he innocently failed to maintain records of account. Under the circumstances proved, the jury could reasonably infer that petitioner had assets which he concealed from the receiver. As stated in *Rudin* v. *United States,* 254 F. 2d 45, 51 (C.A. 6), certiorari denied, 357 U.S. 930:

> Appellant's testimony in his own behalf, in our opinion, failed to rebut the reasonable inferences to be drawn by the jury from the Government's evidence hereinbefore reviewed. Such evidence was sufficient to take the case to the jury and sustain the verdict. * * *

See also *Noell* v. *United States,* 183 F. 2d 334 (C.A. 9), certiorari denied, 340 U.S. 921; *Bisno* v. *United States,* 299 F. 2d 711 (C.A. 9), certiorari denied, 370

[2] Petitioner admitted ordering and receiving the merchandise from more than 25 distributors from all over the country (R. 35b–41b).

U.S. 952. Petitioner's subsequent failure to schedule assets worth in excess of $40,000, the conduct of the bankrupt, the character of the assets, and the reasons given for their omission from the schedule, further justified the jury's verdict. *Coghlan* v. *United States,* 147 F. 2d 233 (C.A. 8), certiorari denied, 325 U.S. 888.

Petitioner's quotations from two portions of the trial court's closing instructions (Pet. 6) have been taken out of context. They both deal with the charge of conspiracy rather than the substantive count of unlawful concealment, and the second excerpt is merely a part of the judge's review of the evidence. Read in their entirety, the instructions were complete and correct. Indeed, at trial petitioner raised no objection to any matter which he now contests.

The cases cited in the petition (Pet. 6–7) are clearly distinguishable. Each involved a substantive charge of unlawful concealment, with a lapse of six months or more between the time the defendant was shown to have possessed the assets and the appointment of a receiver, so that the inference of continuous possession became unreliable with the passage of time. See, *e.g., United States* v. *Schireson,* 116 F. 2d 881, 885 (C.A. 3). Here, upon the evidence presented to the jury, it was clearly "permissible in resolving the unknown from the known, to reach the conclusion of present control from proof of previous possession." *Maggio* v. *Zeitz,* 333 U.S. 56, 65.

Accordingly, petitioner has not presented any consideration which would warrant further review in this case, and the petition for a writ of certiorari should be denied.

Respectfully submitted.

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